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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|-------------------|
| 10/807,875 | 03/25/2004 | Michael Dlugoleski | 1769082-0 | 5507 |
| 42325 | 7590 | 04/26/2005 | EXAMINER | |
| DOHERTY, WALLACE, PILLSBURY & MURPHY, P.C. | | | | BENNETT, GEORGE B |
| ONE MONARCH PLACE, SUITE 1900 | | | | |
| 1414 MAIN STREET | | | | |
| SPRINGFIELD, MA 01144-1900 | | | | ART UNIT |
| | | | | PAPER NUMBER |
| | | | | 2859 |

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/807,875 | DLUGOLESKI, MICHAEL |
| | Examiner | Art Unit |
| | G. Bradley Bennett | 2859 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 March 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-5,7,9-11,14,16 and 19-23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5,7,9-11,14,16 and 19-23 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 25 March 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 1, 10 and 23 are objected to because of the following informalities: “fist terminal” in these claims describing the adjustor should be changed to --first terminal--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 7, 9 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cloutier et al..

4. Cloutier et al. discloses the invention as claimed where : **1A** and **1C** are first and second horizontal components with first and second overlying members and an adjustor element between them; the horizontal components also have knobs **13**, **14**, **16** and **22** as claimed; **1B** and **1D** are vertical components that join to the horizontal components; the device may be connected to a jamb, in which case it will square, level and plumb the jamb; **2** can be considered to be a handle, since the device can be gripped by this member; and **4** are levels.

5. Claims 21 and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ahlvin.

6. Ahlvin discloses the invention as claimed where: **1a** and **2a** comprise a horizontally adjustable component; and **3** is a slotted assembly as claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 10, 11, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cloutier et al. in view of Ahlvin.

9. Cloutier et al. discloses the invention substantially as claimed. However, Cloutier et al. does not disclose tabs as claimed. Ahlvin discloses a plurality of adjustable tabs **3** on a vertical element for the purpose of attaching a framing device within a frame. Therefore, it would have been obvious at the time the invention was made for one of ordinary skill in the art to use a plurality of tabs as taught by Ahlvin in the conjunction with the Cloutier et al. device as an alternative means for securing the Cloutier et al. device within a frame.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cloutier et al. in view of Torstensen.

11. Cloutier et al. discloses the invention substantially as claimed. However, Cloutier et al. does not disclose attaching means for connecting the level to a wall or jamb. Torstensen et al. discloses how attaching means **26** can be used for attaching a framing apparatus to a door jamb. Therefore, it would have been obvious at the time the invention was made for one of ordinary

skill in the art to use attaching means as taught by Torstensen in conjunction with the framing apparatus taught by Cloutier et al. for the purpose of attaching the Cloutier et al. device to a jamb.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cloutier et al. and Ahlvin, as applied to claim 10 above, and further in view of Torstensen.

13. Cloutier et al. and Ahlvin disclose the invention substantially as claimed. However, neither Cloutier et al. nor Ahlvin disclose attaching means for connecting the level to a wall or jamb. Torstensen et al. discloses how attaching means 26 can be used for attaching a framing apparatus to a door jamb. Therefore, it would have been obvious at the time the invention was made for one of ordinary skill in the art to use attaching means as taught by Torstensen in conjunction with the devices of Cloutier et al. and Ahlvin for the purpose of attaching the combination to a frame.

14. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ahlvin in view of Cloutier et al..

15. Ahlvin discloses the invention substantially as claimed. However, neither Ahlvin does not disclose overlying members with an adjustor member between them. Cloutier et al. discloses how two overlying members can join with an adjustor means 9 as an alternative means to render the horizontal component of a framing device adjustable. Therefore, it would have been obvious at the time the invention was made for one of ordinary skill in the art to use adjusting means as taught by Cloutier et al. in conjunction with the devices of Ahlvin as an alternative means for rendering the horizontal component of Ahlvin adjustable.

Conclusion

16. Applicant's arguments with respect to claims 1-5, 7, 9-11, 14, 16 and 19-23 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237. The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


G. Bradley Bennett
Primary Examiner
Art Unit 2859

gbb
25 APR 2005